INFORMATION BULLETIN

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Improvement to the Refundable Tax Credit for Film Production Services

The refundable tax credit for film production services is designed to stimulate job creation in Québec, essentially by encouraging foreign producers to choose Québec as a filming location. This credit is a source of new capital and generates significant economic spinoffs for crafts people and companies in Québec. Some local producers may also claim the tax credit.

In general, the tax credit applies to Québec labour expenditures attributable to the various stages of completion of a production, which must qualify as a qualified production or a qualified low-budget production.

A qualified production is a production that is not a qualified low-budget production. A qualified low-budget production is a production whose production budget does not exceed:

— in the case of a production that is part of a series of television productions of many episodes, or that is the pilot program of such a series of episodes, $100 000 where the screen time is less than 30 minutes, and $200 000 in other cases;

— in the case of another production, $1 000 000.

For a qualified production, the amount of the tax credit is equal to 25% of the qualified labour expenditures, which are not limited on the basis of production costs. In addition, there is no cap on this tax credit. Accordingly, assuming such labour expenditures account for 50% of production costs, the effective rate of the tax credit would be 12.5% of such costs.

In addition, the qualified labour expenditures that relate to computer-aided special effects and animation for use in a qualified production give rise to an increase of 20% in the rate of the tax credit, such that these expenses give rise to a tax credit at the enhanced rate of 45%.

Moreover, a qualified low-budget production can give rise to the tax benefit relating to computer-aided special effects and animation only at the rate of 20%.

Briefly, to receive the tax credit for film production services, a qualified corporation must first obtain approval certificate from the Société de développement des entreprises culturelles (SODEC) regarding the production. Once it has received approval certificate, the qualified corporation must obtain a favourable advance ruling from SODEC and, lastly, claim the tax credit from Revenu Québec.

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The arrival of foreign productions to Québec depends, among other things, on the tax benefits offered to foreign producers. Competition in this field is fierce and the tax assistance available elsewhere is increasingly generous.

Accordingly, to respond adequately to this situation and, thus, keep foreign producers interested in choosing Québec as a film location, the tax credit for film production services, provided it applies to qualified productions, will be revamped. The existing rules of the tax credit for film production services that apply to qualified low-budget productions will not be changed.

More specifically, the base of the tax credit, for which the rate will remain unchanged at 25%, will be broadened. Henceforth it will consist of the all-spend production costs incurred regarding a qualified production.

The all-spend production costs will include the qualified labour cost and the cost of qualified properties incurred regarding a qualified production. However, the qualified production categories will be restricted.

In addition, the improvement for computer-aided special effects and animation, regarding a qualified production, will benefit from the same broadening. However, the rate of this improvement will be 5%.

The new terms and conditions of the tax credit for film production services are described below.[1]

1.1 Broadening of the base of the tax credit to include all-spend production costs

Currently, the base of the tax credit for film production services consists solely of qualified (Québec) labour expenditures attributable to the various stages of production of a qualified film.

The base of the tax credit will be broadened to henceforth apply to all-spend production costs, which will correspond to the total of the qualified labour cost and the cost of qualified properties.

1 These terms and conditions will be found, as the case may be, in the tax legislation or in the parent legislation consolidating the non-tax parameters of certain fiscal measures and whose introduction was announced in *Information Bulletin* 2007-10, on page 16.

❑ Qualified labour cost

The qualified labour cost of a qualified corporation, for a taxation year, means the wages and salaries, including the associated payroll taxes,[2] incurred by the corporation, in the year, regarding an employee as well as the cost of any service contract,[3] incurred by the corporation with a supplier of services, in relation to a qualified production,[4] provided:

— they relate to services provided in Québec,[5] in the course of the year, in relation to the production stages running from screenplay to postproduction;[6]

— they are directly attributable to the completion of the qualified production; and

— they are reasonable in the circumstances.

However, a wage or salary, including the associated payroll taxes, or a cost of a service contract incurred directly or indirectly regarding a producer, an author, a scriptwriter, a director, a production designer, a director of photography, a music director, a composer, a conductor, an editor, a visual effects supervisor, an actor (speaking role) or an interpreter will be qualified only if such person is an individual who resides in Québec at the time when the services are provided in the course of the completion of the qualified production.

Moreover, the cost of a service contract will not be part of the qualified labour cost of a corporation if the supplier of services is a corporation that holds a broadcast license issued by the Canadian Radio-television and Telecommunications Commission or a corporation not at arm's length with a corporation that holds such a license.

❑ Cost of qualified properties

The cost of qualified properties of a qualified corporation, for a taxation year, means the costs incurred by the corporation, in the year, regarding the acquisition or rental, in Québec, of tangible properties (including software), in relation to a qualified production,[7] provided:

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2 These are the payroll taxes the employer must pay, such as contributions to the Québec Pension Plan, to the Commission des normes du travail, to the Québec Parental Insurance Plan and to Employment Insurance. However, they exclude contributions to the Health Services Fund (HSF).

3 Including the fees the qualified corporation must pay to organizations like the Union des artistes (UDA) and the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA).

4 And, for the taxation year during which the corporation submits an application for an advance ruling to SODEC, the qualified labour cost it incurred in a year prior to the one during which it submitted such application.

5 Whether these services are provided directly by the supplier of services or indirectly by another person.

6 Or in relation to another stage of the production that is completed after postproduction within a time considered reasonable by the Minister of Revenue but that cannot exceed the date that occurs 18 months after the fiscal year end of the qualified corporation that includes the date of the recording of the trial print of the qualified production.

7 And, for the taxation year during which the corporation submits an application for an advance ruling to SODEC, the cost of qualified properties it incurred in a year prior to the one during which it submitted such application.

— they relate to properties used in Québec, in the course of the year, in relation to the production stages running from screenplay to postproduction;[8]

— they are incurred with:

  – an individual who resides in Québec at the time the properties are acquired or rented, in the course of the completion of the qualified production; or

  – a corporation or partnership that carries on a business in Québec and has an establishment there at the time the properties are acquired or rented, in the course of the completion of the qualified production;

— they are directly attributable to the completion of the qualified production; and

— they are reasonable in the circumstances.

Moreover, the cost of the qualified properties of a corporation does not include the cost of properties acquired or rented from a corporation that holds a broadcast license issued by the Canadian Radio-television and Telecommunications Commission or a corporation not at arm's length with a corporation that holds such a license.

❑ Acquisition or rental of a property

In the case of the acquisition, by a qualified corporation, of a depreciable property used in the course of completion of the qualified production, the cost of qualified properties includes only the portion of the cost of acquisition of the property belonging to the corporation that corresponds to the portion of the accounting depreciation of the property, for a taxation year, determined in accordance with generally accepted accounting principles (GAAP), relating to the use in Québec made by the corporation of the property in such year, in the course of the completion of the qualified production.[9]

In the case of the rental of a property, the cost of qualified properties includes only the portion of the cost of rental of the property, for a taxation year, reasonably attributable to its use in Québec by the corporation in such year, in the course of the completion of the qualified production.

8 See note 6 above.

9 For greater clarity, an acquisition includes a capital lease.

❑ Wholly-owned subsidiary

The all-spend production costs of a qualified corporation also include, where the qualified corporation is a wholly-owned subsidiary of another corporation, the repayment made by the qualified corporation of an expenditure that the other corporation incurred in the taxation year regarding the qualified production that would be, because of the application details of the tax credit, included in the all-spend production costs of the qualified corporation regarding the production for the taxation year if, as the case may be, the qualified corporation had had such a taxation year and if such expenditure had been incurred by the qualified corporation for the same purposes as it was by the other corporation and paid to the same person or partnership that it was by the other corporation.

❑ Anti-avoidance rule

For the purposes of determining the amount of the tax credit for film production services of a qualified corporation that incurred all-spend production costs under a contract that the corporation entered into with a person or a partnership with which it is not at arm's length, if, in the view of the Minister of Revenue, one of the purposes of the existence of such a contract is to increase the amount of the tax credit, that, in the absence of such a contract, would have been obtained, the amount of the tax credit will be reduced by the amount of such increase.

To determine whether a qualified corporation is not at arm's length with a partnership, the partnership shall be considered a corporation all of whose shares with voting rights belong to the members of the partnership in proportion to what would be the allocation among them of the income or losses of the partnership had the fiscal year of the partnership ended on the date when the contract was entered into.

1.2 Categories of qualified productions

Currently, the categories of qualified productions for the tax credit for film production services are identical to those stipulated for the purposes of the tax credit for Québec film and television production.

In general, categories of qualified productions include films of fiction, documentaries and certain magazine and variety-type television programs.

In view of the new rules that will broaden the base according to which the tax credit for film production services will henceforth be calculated, it is necessary to tighten up the categories of qualified productions so that all magazine and variety-type programs will henceforth be excluded.

Accordingly, in the case of qualified productions only, the categories of productions qualified for the tax credit will henceforth be:

— films of fiction, including films consisting entirely of sketches each of which is drawn completely from a screenplay and that are designed and put together specially for television; and

— documentaries with a minimum program length of 30 minutes or, in the case of a series, 30 minutes per episode, except for documentaries intended for children under age 13.

1.3 Rate of the tax credit

The base rate of the tax credit for film production services that can be claimed exclusively for a qualified production will remain 25%.

1.4 Improvement for computer-aided special effects and animation

The improvement for computer-aided special effects and animation is designed to support the technological development of the industry in Québec by providing additional support regarding labour expenditures relating to computer-aided special effects and animation for use in a qualified film or television production.

Currently, the labour expenditures qualified for the tax credit associated with the completion of computer-aided special effects and animation for use in a qualified production or a qualified low-budget production give rise to tax assistance at the rate of 20%.

Briefly, the qualified labour expenditures for this improvement include both the wages paid to the employees of the corporation that produces the film and those paid to employees of a technical services business that acts as subcontractor for part of the production work directly attributable to qualified activities relating to the completion of computer-aided special effects and animation that such employees carry out in the course of a qualified production or a qualified low-budget production.

However, only the remuneration paid to employees or to individuals residing in Québec or to corporations or partnerships with an establishment in Québec, for services provided by such employees or individuals, constitutes a qualified labour expenditure.

The qualified activities relating to the completion of computer-aided special effects and animation for the purposes of the improvement mean the activities that contribute directly to the creation of computer-aided special effects and animation and those relating to the shooting of scenes in front of a chroma-key.

Moreover, the improvement for computer-aided special effects and animation applies the same way both in the case of a qualified production and a qualified low-budget production. However, in the latter case, the improvement is the only tax benefit available.

In the future, the qualified activities relating to the completion of computer-aided special effects and animation will benefit from different tax treatment depending on whether the production is a qualified production or a qualified low-budget production.

❑ Qualified production

Like the situation that will prevail for the basic tax credit, the improvement for computer-aided special effects and animation regarding a qualified production will also apply to all-spend production costs, but only to the extent that such expenses relate to qualified activities relating to the completion of computer-aided special effects and animation for use in the production.

However, because of the broadening of the base of the improvement, its rate, in the case of a qualified production, will be reset at 5%.

For greater clarity, the qualified activities targeted by the new rules will be the same as those targeted by the current improvement.

❑ Qualified low-budget production

In the case of a qualified low-budget production, no change will be made to the improvement for computer-aided special effects and animation. Accordingly, it will continue to apply solely to the qualified labour expenditures that relate to computer-aided special effects and animation for use in the production and, consequently, the rate of the improvement will remain 20%.

For greater clarity, only the improvement for computer-aided special effects and animation may be claimed in relation to a qualified low-budget production.

1.5 Government and non-government assistance

The total amount of all-spend production costs incurred by a qualified corporation must be reduced by the amount of any government assistance, any non-government assistance and any profit or gain, according to the usual rules.[10]

For greater clarity, the amount of a financial contribution paid by a public body that holds a broadcast license issued by the Canadian Radio-television and Telecommunications Commission will be considered government assistance.

10 Accordingly, the gain attributable to the cost of qualified properties includes the portion of the proceeds of disposition of a property that relates to the portion of the cost of acquisition of the property already included on account of the cost of qualified properties, up to the amount already thus included.

1.6 Other detail

The amounts relating to all-spend production costs must have been paid at the time the corporation claims, for the first time, the tax credit for production services regarding such costs for a taxation year.

1.7 Application date

The changes will apply regarding a qualified production for which the main photography or recording work in Québec is completed after the date of publication of this information bulletin.

For information concerning the matters dealt with in this information bulletin, contact the Secteur du droit fiscal et de la fiscalité at 418 691-2236.

The French and English versions of this bulletin are available on the ministère des Finances website at: www.finances.gouv.qc.ca

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